

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

ANGELO LENELL DAVIS,	)	
	)	Civil Action No. 11 – 1506
Plaintiff,	)	
	)	Chief Magistrate Judge Lisa Pupo Lenihan
v.	)	
	)	
MICHAEL HARLOW, <i>et al.</i> ,	)	
	)	
Defendants.	)	
	)	

**ORDER**

On November 18, 2013, this Court entered a Scheduling Order (doc. no. 101) giving Plaintiff until December 16, 2013, to respond to Defendants pending Motion for Summary Judgment (doc. no. 97). The Court is now in receipt of Plaintiff's Notice of Appeal to the District Judge as to the directives of that Scheduling Order. Upon review, it appears as though the Court erred in including language at the bottom of that Order informing Plaintiff that he could appeal to a District Judge. All parties in this case have consented to jurisdiction by the Magistrate Judge and therefore Plaintiff cannot appeal that Order to a District Judge. *See* doc. no. dated 03/07/12. However, the Court will *sua sponte* construe Plaintiff's appeal as a motion for reconsideration.

Plaintiff claims that the Court's denial of his motions at doc. nos. 90, 95, and 96 was in error. Plaintiff's motion at doc. no. 90 was a motion to compel and/or for sanctions against defendants for failure to comply with certain discovery requests. After defendants filed a response to the motion, the Court addressed Plaintiff's discovery complaints and denied the

motion advising that no further discovery would be allowed in this action. *See* doc. no. 94. Plaintiff's motion at doc. no. 95 was a motion for extension of time to file a response to the defendants' response to his previous motion and his motion at doc. no. 96 was a motion for leave of court for new deadlines to respond to the request for production of documents. The Court denied both motions on November 14, 2013. *See* text order dated 11/14/13.

Defendants filed their motion for summary judgment on November 15, 2013, and, by Scheduling Order dated November 18, 2013, Plaintiff was allowed until December 16, 2013, to file his response in opposition to their motion. *See* doc. nos. 97-101. As noted in the beginning of this order, Plaintiff has now appealed that Scheduling Order (and what appears the denial of his motions at doc. nos. 90, 95, and 96) to a District Judge pursuant to language that should have only been included if the parties had not consented to jurisdiction of the magistrate judge. That is not the case here. Because Plaintiff may not appeal to a District Judge, the Court will *sua sponte* construe his appeal as a motion for reconsideration but deny it for reasons already stated in the Court's denial of Plaintiff's motions filed at doc. nos. 90, 95, and 96. If Plaintiff still wishes to appeal the Court's Scheduling Order and the denial of his motions regarding discovery then he must do so by filing a notice of appeal to the Third Circuit Court of Appeals. The appeal fee is \$455.00 or Plaintiff may file a motion for leave to proceed on appeal *in forma pauperis*.

If Plaintiff does not desire to appeal then the Court will amend the Scheduling Order and allow Plaintiff until January 8, 2013 to file his response to Defendants' motion for summary judgment.

Therefore,

**IT IS HEREBY ORDERED** that Plaintiff's Notice of Appeal to the District Judge (doc no. 102) is *sua sponte* construed as a Motion for Reconsideration and denied for the reasons

stated in the Court's Orders dated October 11, 2013 (doc. no. 94, denying doc. no. 90) and November 14, 2013 (Text order denying doc. nos. 95, 96).

**IT IS HEREBY ORDERED** that the Court's Scheduling Order (doc no. 101) is modified to read that Plaintiff shall be allowed until **January 8, 2013**, to respond to Defendants' Motion for Summary Judgment.

**IT IS FURTHER ORDERED** that if Plaintiff still desires to appeal the Court's Scheduling Order and the Court's Orders denying his motions regarding discovery, then he must file a Notice of Appeal to the Third Circuit Court of Appeals.

Dated: December 11, 2013

/s/ Lisa Pupo Lenihan  
Lisa Pupo Lenihan  
Chief United States Magistrate Judge

cc: Angelo Lenell Davis  
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*Via First Class Mail*